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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/519,094

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Paulus Maria Smeets

2004-1048

9003

466

7590

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EXAMINER

RASHID, MAHBUBUR

ART UNIT

PAPER NUMBER

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/519,094	Applicant(s) SMEETS ET AL.	
	Examiner MAHBUBUR RASHID	Art Unit 3657	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-14 and 16-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-2, 4-14 and 16-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Claims 1, 4-14 and 16-17 are amended.

Claims 3 and 15 are cancelled.

Claims 18-20 are added as new claims.

Drawings

Figures 1A-1C and 6 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

Claim 4 is objected to because of the following informalities: "is comprises" in line 2 should be -comprises-. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 4-8, 10-14 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In line 4 of claim 2, "at the level of the tensile means in the belt" – is not clear. Appropriate correction is required.

Claim 2 recites the limitation "the strap like means" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Regarding claim 4, the phrase "rubber like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Claim 4 recites the limitation "the tensile element" in lines 4 and 5. There is insufficient antecedent basis for this limitation in the claim.

Regarding claim 4, the claim itself is not clear and confusing how a small layer of elastically deformable material is located in a contact between the tensile element and a transverse element.

Claim 5 recites the limitation "the tensile element" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Regarding claim 6, it is not clear how the width of the tensile means corresponds to the width of a transverse element when the width of the transverse element slightly extending beyond the tensile means. Furthermore, it is confusing if the applicant is

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referring to the width of one particular transverse element or the width of the transverse elements as disclosed in claim 1.

Regarding claim 7, it is not clear if the applicant is referring "the element" in line 2, as the tensile element or one of the transverse elements.

Claim 7 recites the limitation "the smallest running radius" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 8 recites the limitation "the intermediate body" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 10 recites the limitation "the intermediate body" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 11 recites the limitation "the intermediate body" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 12 recites the limitation "the intermediate body" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 13 recites the limitation "the intermediate body" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 14 recites the limitation "the maximum element height" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 14 recites the limitation "the nominal element width" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Regarding claim 17, it is not clear if the applicant is referring "a tensile means" and "transverse elements" in line 3, are the same as the tensile means and the transverse elements as disclosed in claim 1.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 6, 9-12, 14 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by W. R. Perry (US 2,322,466).

Regarding **claim 1**, Perry discloses a drive belt (fig. 1) provided with a tensile means (10), in which the tensile means (10) is incorporated radially centered in the belt, wherein the belt is provided with transverse elements (11) disposed on to at least one radial side of the tensile means (10), and in which elastically deformable material is included between the tensile means and the transverse elements, characterized in that the tensile means is composed of a solid flat strip (see col. 1, lines 43-50).

Re-claim 2, see the width of the tensile means (10) and the width of the transverse means (11).

Re-claim 4, see the tensile means comprises an elastically deformable, rubber like material (see col. 1, lines 43-50).

Re-claim 6, see the width of the tensile means (10) and the transverse elements (11).

Re-claim 9, see the mutual distance and the thickness of the transverse elements (11).

Re-claim 10, see the maximum height of the intermediate body (26) and the mutual distance between the transverse elements (11).

Re-claim 11, see the width of the tensile means (10).

Re-claims 12 and 14, see the height of the intermediate body (26), the transverse elements (11) and the tensile means (10).

Re-claim 16, see the tensile means (10).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 5, 7, 8 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over W. R. Perry (US 2, 322, 466).

Regarding **claims 5, 7, 8 and 17-20**, Perry discloses the claimed invention except for the specific values of the thickness and elasticity modulus of the tensile means and the intermediate body. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide such thickness and elasticity modulus of the tensile means and the intermediate body of the belt of Perry, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

Regarding **claim 13**, Perry uses a several types of fastening members (29, 121, and 327) to attach the intermediate body (26) to the tensile means (10) but fails to disclose the using of adhesive to attach the intermediate body to the tensile means. The examiner takes official notice that adhesive is well known method of attachment. The choice of attachment method is an engineering design choice based on factors such as ease of assembly, durability, availability of materials or equipment and one of ordinary skill in the art would choose any appropriate method of attachment based on these and other factors.

Response to Arguments

Applicant's arguments with respect to claims 1-2, 4-14 and 16-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MAHBUBUR RASHID whose telephone number is (571)272-7218. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Siconolfi can be reached on (571) 272-7124. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. R./
Examiner, Art Unit 3657

/Robert A. Siconolfi/
Supervisory Patent Examiner, Art
Unit 3657